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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Gary Louis Barocsi,)	No. CV 11-1582-PHX-DGC (MEA)
Petitioner,)	ORDER
vs.)	
Joseph M. Arpaio, et al.,)	
Respondents.)	

On August 11, 2011, Petitioner Gary Louis Barocsi, who is confined in the Maricopa County Lower Buckeye Jail, filed a *pro se* Petition under 28 U.S.C. § 2254 for a Writ of Habeas Corpus by a Person in State Custody (Doc. 1) and paid the filing fee. For multiple reasons, this case will be dismissed without prejudice.

I. Relief Unavailable under 28 U.S.C. § 2254

Petitioner is a pretrial detainee. His case, Maricopa County Superior Court case #CR2010-131274-001 DT, is still ongoing.¹ Relief is therefore unavailable pursuant to 28 U.S.C. § 2254, which requires that a person be in custody pursuant to a **judgment** of a State court.

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¹Petitioner is scheduled to be sentenced on September 8, 2011. See <http://www.courtminutes.maricopa.gov/docs/Criminal/082011/m4829223.pdf>

1 **II. Relief Unavailable under 28 U.S.C. § 2241 – Failure to Exhaust State Remedies**

2 Section 2241, 28 U.S.C., provides an avenue for habeas corpus relief for a pretrial
3 detainee in custody in violation of the Constitution or laws and treaties of the United States.
4 “As an exercise of judicial restraint, however, federal courts elect not to entertain habeas
5 corpus challenges to state court proceedings until habeas petitioners have exhausted state
6 avenues for raising [a] federal claim.” Carden v. Montana, 626 F.2d 82, 83 (9th Cir. 1980).
7 Petitioner has not exhausted his state remedies before bringing this habeas corpus action.

8 **III. Younger Abstention**

9 The abstention doctrine set forth in Younger v. Harris, 401 U.S. 37 (1971), prevents
10 a federal court in most circumstances from directly interfering with ongoing criminal
11 proceedings in state court. Absent special circumstances, such as “proven harassment or
12 prosecutions undertaken by state officials in bad faith without hope of obtaining a valid
13 conviction and perhaps in other extraordinary circumstances where irreparable injury can be
14 shown,” a federal court will not entertain a pretrial habeas corpus petition. Carden, 626 F.2d
15 at 84 (quoting Perez v. Ledesma, 401 U.S. 82, 85 (1971)). “[O]nly in the most unusual
16 circumstances is a defendant entitled to have federal interposition by way of injunction or
17 habeas corpus until after the jury comes in, judgment has been appealed from and the case
18 concluded in the state courts.” Id. at 83-84 (quoting Drury v. Cox, 457 F.2d 764, 764-65 (9th
19 Cir. 1972)).

20 Petitioner has failed to show special or extraordinary circumstances indicating that he
21 will suffer irreparable harm if this Court abstains from hearing his claims until after he has
22 a chance to present his claims to the state courts. See Younger, 401 U.S. at 45-46; Carden,
23 626 F.2d at 83-84. This Court, therefore, will abstain from interfering in Petitioner’s ongoing
24 state-court criminal proceedings.

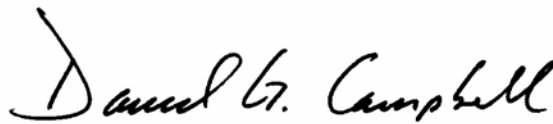
25 **IV. Dismissal Without Prejudice**

26 The § 2254 Petition and this action will be dismissed without prejudice. Petitioner
27 may file another petition in a new habeas corpus action after all state criminal proceedings
28 are completed and available state judicial remedies are exhausted. See Swoopes v. Sublett,

1 196 F.3d 1008, 1010 (9th Cir. 1999) (“[E]xcept in habeas petitions in life-sentence or capital
2 cases, claims of Arizona state prisoners are exhausted for purposes of federal habeas once
3 the Arizona Court of Appeals has ruled on them.”).

4 **IT IS ORDERED** that Petitioner’s § 2254 Petition (Doc. 1) and this action are
5 **dismissed without prejudice**, and the Clerk of Court **must enter** judgment accordingly.

6 DATED this 25th day of August, 2011.

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David G. Campbell
11 United States District Judge
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